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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,133	07/23/2003	Paul Kenneth Pickard	N0023/287661	9372
7590	06/27/2006		EXAMINER	
John S. Pratt, Esq. Kilpatrick Stockton LLP Suite 2800 1100 Peachtree Street Atlanta, GA 30309-4530			NEGRON, ISMAEL	
			ART UNIT	PAPER NUMBER
			2875	

DATE MAILED: 06/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/626,133	PICKARD ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Ismael Negron	2875	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 14 April 2006.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-9 and 21-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 22-24, 26 and 27 is/are allowed.
- 6) Claim(s) 1-5, 7-9, 21, 25, 29 and 30 is/are rejected.
- 7) Claim(s) 6 and 28 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 23 July 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

### ***Response to Amendment***

2. Applicant's amendment filed on April 14, 2006 has been entered. Claims 1-9, 21, 22, 24 and 25 have been amended. No claim has been cancelled. Claims 26-30 have been added. Claims 1-9 and 21-30 are still pending in this application, with claims 1 and 25 being independent.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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3. Claims 1, 3-5 and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by WEGRZYN et al. (U.S. Pat. 6,019,477).

4. WEGRZYN et al. discloses an apparatus having:

- **a housing for an emergency luminaire (as recited in Claim 1),**  
as seen Figure 8;
- **the housing having at least one concavity (as recited in Claim 1),** Figure 8, reference number 90;
- **the concavity being attached to the housing by fastening means,** Figure 8, reference number 98;
- **the concavity being such that a movable optical assembly and a fixed optical assembly may be interchangeably mounted (as recited in Claim 1),** inherent as evidenced by Figure 14;
- **the housing having a front portion (as recited in Claim 3),**  
Figure 2, reference number 10;
- **the housing having a back portion (as recited in Claim 3),**  
Figure 2, reference number 20;
- **the front and back portion being capable of being releasably coupled (as recited in Claim 3),** column 2, lines 44-47;
- **a chamber (as recited in Claim 3),** as seen in Figure 8;
- **the chamber being defined by the front and back portions when engaged (as recited in Claim 3),** as seen in Figure 8;

- **the chamber containing operational components of illumination device (as recited in Claim 3), as seen in Figure 8;**
- **the front and the back portion being unitary structures (as recited in Claim 4), as seen in Figure 8;**
- **the front and back portions being formed of a plastic material (as recited in Claim 4), column 4, lines 51-58;**
- **the front and the back portion snap-fit together (as recited in Claim 5), column 2, lines 44-47;**
- **the concavity forming a generally semi-spherical surface (as recited in Claim 30), Figure 14, reference number 90;**
- **the generally semi-spherical surface mating with a generally spherical movable optical assembly when mounted in the concavity (as recited in Claim 30), as seen in Figure 14;**
- **the generally semi-spherical surface mating with a fixed optical assembly when mounted in the concavity (as recited in Claim 30), inherent.**

5. Regarding the cavity being integrally formed in an outer surface of the housing, the applicant is advised that it has been held that the term "*integral*" is sufficiently broad to embrace construction means such as fastening and welding. *In re Hotte*, 177 USPQ 326, 328 (CCPA 1973).

6. Regarding the concavity being configured for alterative mounting of movable and fixed optical assemblies (as recited in Claim 1), the applicant is once again advised that, while the features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Schreiber*, 44 USPQ2d 1429. In addition, it has been held by the courts that apparatus claims cover what a device is, not what a device does. *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 15 USPQ2d 1525 (Fed. Cir. 1990). In this case, the patented apparatus of WEGRZYN et al. discloses all the structural limitations (as detailed above) required to perform the recited function (i.e. mounting fixed a movable optical assemblies), therefore was considered to anticipate the claimed apparatus.

7. Regarding the generally semi-spherical surface mating with a fixed optical assembly such that the fixed optical assembly does not protrude from a front portion of the housing, such recitation was considered without patentable weight as it refers to the shape and nature of the fixed optical assembly, such assembly not being an element of structure of the claimed invention, but an external body intended to be used with the claimed housing.

8. Claims 1, 25 and 29 rejected under 35 U.S.C. 102(b) as being anticipated by SELTZER et al. (U.S. Pat. 4,414,611).

9. SELTZER et al. discloses an apparatus having:

- **a housing for an emergency unit luminaire (as recited in claims 1 and 25), Figure 1, reference number 10;**
- **the housing including a concavity (as recited in claims 1 and 25), Figure 1, reference number 20;**
- **the concavity being integrally formed in an outer surface of the housing (as recited in claims 1 and 25), as seen in Figure 1;**
- **the concavity being configured for alterative mounting of movable and fixed optical assemblies (as recited in claims 1 and 25), inherent, as evidenced by Figure 1;**
- **the concavity including a plurality of openings for mounting fixed and movable optical assemblies (as recited in Claim 25), Figure 1, reference numbers 37, 70 and 74;**
- **the concavity being shaped such that that a fixed optical assembly does not protrude from a general front profile of the housing when the fixed optical assembly is installed in the housing (as recited in Claim 25), column 3, lines 29-33; and**
- **the concavity being shaped such that a lens of a fixed optical assembly mates with the shape of the concavity when the fixed optical assembly is installed therein (as recited in Claim 29), column 3, lines 29-33.**

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10. Regarding the concavity being configured for alterative mounting of movable and fixed optical assemblies, the applicant is once again advised that, while the features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Schreiber*, 44 USPQ2d 1429. In addition, it has been held by the courts that apparatus claims cover what a device is, not what a device does. *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 15 USPQ2d 1525 (Fed. Cir. 1990). In this case, the patented apparatus of SELTZER et al. discloses all the structural limitations (as detailed above) required to perform the recited function (i.e. mounting fixed a movable optical assemblies), therefore was considered to anticipate the claimed apparatus.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over WEGRZYN et al. (U.S. Pat. 6,019,477).

12. WEGRZYN et al. discloses an apparatus having:
  - **a housing (as recited in claims 1 and 25), as seen Figure 8;**
  - **the housing having at least one concavity (as recited in Claim 1), Figure 8, reference number 90; and**
  - **the concavity being such that a movable optical assembly and a fixed optical assembly may be interchangeably mounted (as recited in Claim 1), inherent as evidenced by Figure 14.**
13. WEGRZYN et al. discloses all the limitations of the claims, except the concavity being angled downward.
14. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to form the concavity of the housing of WEGRZYN et al. to be angled downward, since it has been held by the courts that a change in shape or configuration, without any criticality, is nothing more than one of numerous shapes that one of ordinary skill in the art will find obvious to provide based on the suitability for the intended final application. See *In re Dailey*, 149 USPQ 47 (CCPA 1976). In this case, using a concavity angled downward would have flown naturally if the device of WEGRZYN et al. was designed to be located above the intended target of illumination.  
In addition, the Examiner takes Official Notice of applicant's statements regarding emergency illumination devices being generally configured to project light downwardly toward the floor when installed. See page 13 (lines 8-10) of applicant's response filed November 10, 2005.

15. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over WEGRZYN et al. (U.S. Pat. 6,019,477).

16. WEGRZYN et al. discloses an apparatus having:

- **a housing (as recited in Claim 1), as seen Figure 8;**
- **the housing having at least one concavity (as recited in Claim 1), Figure 8, reference number 90; and**
- **the concavity being such that a movable optical assembly and a fixed optical assembly may be interchangeably mounted (as recited in Claim 1), inherent as evidenced by Figure 14;**
- **each concavity including a first opening (as recited in Claim 2), Figure 12, reference number 44; and**
- **the first opening being configured to receive a movable optical assembly when a movable optical assembly is mounted in the concavity (as recited in Claim 2), as seen in Figure 12.**

17. WEGRZYN et al. discloses all the limitations of the claims, except:

- **each concavity also including a second opening (as recited in Claim 2); and**
- **the second opening being spaced apart from the first opening (as recited in Claim 2);**
- **the second opening being differently sized than the first opening (as recited in Claim 2);**

- the second opening being configured to receive a fixed optical assembly is mounted in the concavity.

18. It would have been obvious to one of ordinary skill in the art at the time the invention was made to add a second opening to each of the concavities of WEGRZYN et al. as desired or required by the particulars of a given application, since it has been held that mere duplication of essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. Utilizing such second opening for receiving a portion of a fixed optical assembly was considered without patentable weight as it refers to the intended use of the second opening without structurally differentiating such second opening from the opening disclosed by WEGRZYN et al..

19. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over WEGRZYN et al. (U.S. Pat. 6,019,477) in view of COHEN (U.S. Pat. 3,302,918).

20. WEGRZYN et al. discloses an apparatus having:

- **a housing (as recited in Claim 1), as seen Figure 8;**
- **the housing having at least one concavity (as recited in Claim 1), Figure 8, reference number 90;**
- **the concavity being such that a movable optical assembly and a fixed optical assembly may be interchangeably mounted (as recited in Claim 1), inherent as evidenced by Figure 14;**

- **the housing having a front portion (as recited in Claim 3),**  
Figure 2, reference number 10;
- **the housing having a back portion (as recited in Claim 3),**  
Figure 2, reference number 20;
- **the front and back portion being capable of being releasably coupled (as recited in Claim 3),** column 2, lines 44-47;
- **a chamber (as recited in Claim 3),** as seen in Figure 8;
- **the chamber being defined by the front and back portions when engaged (as recited in Claim 3),** as seen in Figure 8; and
- **the chamber containing operational components of illumination device (as recited in Claim 3),** as seen in Figure 8.

21. WEGRZYN et al. discloses all the limitations of the claims, except:

- the front portion receiving a printed circuit board (as recited in Claim 7);
- the circuit board including projections carrying electrical contact pads (as recited in Claim 7);
- the back portion mounting electrical contacts (as recited in Claim 7);
- the electrical contacts being connected to a power source (as recited in Claim 7);
- the power source being external to the housing (as recited in Claim 7);

- the back portion guiding the projections of the printed circuit board into engagement with the electrical contacts to form at least a portion of an electrical circuit, upon engagement of the front portion and the back portion (as recited in Claim 7).

22. COHEN discloses an illumination device having:

- **a housing (as recited in Claim 1)**, as seen in Figure 1;
- **the housing having a top portion (as recited in Claim 1)**, Figure 2, reference number 13;
- **the housing having a bottom portion (as recited in Claim 1)**, Figure 2, reference number 21;
- **the housing including an interchangeably mounted illumination assembly (as recited in Claim 1)**, Figure 1, reference number 11;
- **the top and bottom portions being releasably engaged (as recited in Claim 3)**, as evidenced by Figure 2;
- **a chamber (as recited in Claim 3)**, as seen in Figure 2;
- **the chamber being defined by the front and back portions when engaged (as recited in Claim 3)**, as seen in Figure 2;
- **the chamber containing operational components of illumination device (as recited in Claim 3)**, as seen in Figure 2;
- **the bottom portion receiving a terminal (as recited in Claim 7)**, Figure 2, reference number 25;

- **the terminal including projections for carrying electrical contact pads (as recited in Claim 7), Figure 2, reference number 25a;**
- **the top portion mounting electrical contacts (as recited in Claim 7), Figure 2, reference number 17;**
- **the electrical contacts being connected to a power source (as recited in Claim 7), inherent;**
- **the power source being external to the housing (as recited in Claim 7), as evidenced by Figure 2;**
- **the top portion guiding the projections of the terminal into engagement with the electrical contacts to form at least a portion of an electrical circuit, upon engagement of the bottom and top portion (as recited in Claim 7), column 3, lines 28-35.**

23. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to include the connecting means of COHEN in the illumination device of WEGRZYN et al. to be able to easily and rapidly install or remove the electrical components to the external power source, as per the teachings of COHEN (see column 1, lines 13-25).

24. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over WEGRZYN et al. (U.S. Pat. 6,019,477) in view of REYNOLDS (U.S. Pat. 6,129,440).

25. WEGRZYN et al. discloses an apparatus having:
- **a housing (as recited in Claim 1), as seen Figure 8;**
  - **the housing having at least one concavity (as recited in Claim 1), Figure 8, reference number 90;**
  - **the concavity being such that a movable optical assembly and a fixed optical assembly may be interchangeably mounted (as recited in Claim 1), inherent as evidenced by Figure 14;**
  - **the housing having a front portion (as recited in Claim 3),**  
Figure 2, reference number 10;
  - **the housing having a back portion (as recited in Claim 3),**  
Figure 2, reference number 20;
  - **the front and back portion being capable of being releasably engaged (as recited in Claim 3), column 2, lines 44-47;**
  - **a chamber (as recited in Claim 3), as seen in Figure 8;**
  - **the chamber being defined by the front and back portions when engaged (as recited in Claim 3), as seen in Figure 8;**
  - **the chamber containing operational components of illumination device (as recited in Claim 3), as seen in Figure 8;**
  - **a test mechanism (as recited in Claim 8), column 2, lines 64 and 65;**

- **the test mechanism testing the status of operational components of the luminaire (as recited in Claim 8), column 2, lines 64 and 65;**
- **the test mechanism including a push button (as recited in Claim 8), Figure 1, reference number 38;**
- **the push button extending through an opening in the housing (as recited in Claim 8), as seen in Figure 1;**
- **a light source (as recited in Claim 8), Figure 1, reference number 40;**
- **the light source being disposed on a printed circuit board inside the housing(as recited in Claim 8), as evidenced by column 3, lines 1-5;**
- **a test switch dispose on the circuit board (as recited in Claim 8), column 3, lines 1-3;**
- **an element that engages the test switch upon depression of the push button (as recited in Claim 8), column 3, lines 1-3;**
- **the test switch initiating a test sequence (as recited in Claim 8), column 2, lines 64 and 65;**
- **the test mechanism including a base (as recited in Claim 8), Figure 1, reference number 36;**
- **an element that engages the test switch upon depression of the push button (as recited in Claim 8), column 3, lines 1-3;**

- **the push button, the base, and the element being integrally formed (as recited in Claim 9), as evidenced by Figure 1.**

26. WEGRZYN et al. discloses all the limitations of the claims, except:

- a test mechanism (as recited in Claim 8);
- the test mechanism testing the status of operational components of the luminaire (as recited in Claim 8);
- the test mechanism including a light-transmissive push button (as recited in Claim 8);
- the push button extending through an opening in the housing (as recited in Claim 8);
- the test mechanism including a light-transmissive base (as recited in Claim 8);
- the base being operable with the push button (as recited in Claim 8);
- a light emitting diode (as recited in Claim 8);
- the light emitting diode being disposed on a printed circuit board inside the housing(as recited in Claim 8);
- the base carrying light from the light emitting diode (as recited in Claim 8);
- a test switch dispose on the circuit board (as recited in Claim 8);
- an element that engages the test switch upon depression of the push button (as recited in Claim 8);

- the test switch initiating a test sequence (as recited in Claim 8);
- the push button, the base, and the element being integrally formed (as recited in Claim 9).

27. REYNOLDS discloses a switch operating structure having:

- **a push button (as recited in Claim 8)**, Figure 2D, reference number 20B;
- **the push button including a light-transmissive base (as recited in Claim 8)**, Figure 2D, reference number 31E;
- **the base being operable with the push button (as recited in Claim 8)**, as seen in Figure 2D;
- **a light emitting diode (as recited in Claim 8)**, Figure 5, reference number 52;
- **the light emitting diode being disposed on a printed circuit board inside a housing (as recited in Claim 8)**, as seen in Figure 5;
- **the base carrying light from the light emitting diode (as recited in Claim 8)**, column 6, lines 8-13;
- **a test switch dispose on the circuit board (as recited in Claim 8)**, Figure 5, reference number 50;
- **an element that engages the test switch upon depression of the push button (as recited in Claim 8)**, column 5, lines 36-38;

**the push button, the base, and the element being integrally formed (as recited in Claim 9), as seen in Figure 3D.**

28. It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to use the push button structure of REYNOLDS in the illumination device of WEGRZYN et al. to provide such device with a push button having integrated illumination means to facilitate locating the push button and the simplify the push button/indicator light structure of WEGRZYN et al..

29. In addition, the examiner takes Official Notice that the use of LEDs is old and well known in the illumination art. It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute an LED for the light source in the system of WEGRZYN et al.. One would have been motivated since LEDs are recognized in the illumination art to have many desirable advantages, including reduced size, high efficiency, low power consumption, long life, resistance to vibrations, and low heat production, over other light sources.

#### ***Relevant Prior Art***

30. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

**Morrison et al.** (U.S. Pat. 3,748,458), **Hsiao** (U.S. Pat. 4,535,391), **Sheu et al.** (U.S. Pat. 5,599,089), **Caldwell** (U.S. Pat. 5,727,865), **Tanaka** (U.S. Pat. 5,971,151)

and Winnik (U.S. Pat. 6,398,394) disclose housing including integrally formed concavities configured for alternatively mounting a movable and a fixed optical assembly

***Allowable Subject Matter***

31. Claims 22-24, 26 and 27 are allowed.
32. Claims 6 and 28 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
33. The following is a statement of reasons for the indication of allowable subject matter:

Applicant teaches a housing for emergency illumination units, such housing including at least one concavity, with each concavity having first and second openings; a larger opening configured to receive a fixed optical assembly, and a smaller opening spaced apart from the larger opening, such smaller opening being configured to receive a movable optical assembly. In a second embodiment, the first and second openings are located opposed one another along the outer periphery of the concavity. In a third embodiment, the front and back portions of the housing include a projecting slope, receiver arrangement for transferring weight from the front portion to the back portion.

No prior art was found teaching individually, or suggesting in combination, all of the features of the applicants' invention, specifically the size and/or spatial relationship between the fixed optical assembly opening and the movable optical assembly opening, or the front/back portion weight transferring structures, in combination with the recited structural limitations of the claimed invention.

***Response to Arguments***

34. Applicant's arguments filed April 14, 2006 have been fully considered but they are not persuasive.

35. Regarding the Examiner's rejection of Claim 1 under 35 U.S.C. 102(b) as being anticipated by WEGRZYN et al. (U.S. Pat. 6,019,477), the applicant argues that the cited reference fails to disclose all the features of the claimed invention, specifically a concavity that is part of the housing, or such concavity being integrally formed in an outer surface of the housing. The applicant further argues that not only there is no teaching or suggestion anywhere in the cited reference to use a fixed optical assembly with the patented housing structure, but also that such fixed optical structure would result in poor optical performance.

36. In response to applicant's arguments that WEGRZYN et al. failed to disclose individually, or suggest in combination, a concavity that is part of the housing, the applicant is respectfully advised that while the claims of issued patents are interpreted

in light of the specification, prosecution history, prior art and other claims, this is not the mode of claim interpretation to be applied during examination. During examination, the claims must be interpreted as broadly as their terms reasonably allow. *In re American Academy of Science Tech Center*, 70 USPQ2d 1827 (Fed. Cir. May 13, 2004).

In this case, WEGRZYN et al. discloses a housing having a mounting member 90 (Figure 12), such member 90 forming a concavity for receiving lighting heads 42a-b (Figure 8). The mounting member 90 is attached to the housing by means of a bracket 80/tab 94 combination and a screw 98 (Figure 12). The mounting member 90 was broadly considered as part of the housing, such housing clearly including the claimed concavity.

37. Regarding the concavity being integrally formed in an outer surface of the housing, the applicant is respectfully directed to previous Section 5 where such limitation is addressed.

38. In response to applicant's arguments that there is no teaching or suggestion anywhere in WEGRZYN et al. to use a fixed optical assembly with the patented housing structure, and that such fixed optical structure would result in poor optical performance, the applicant is advised that such arguments are irrelevant, since the rejected claim merely recites the concavity having the **capacity** for receiving a fixed optical assembly (i.e. "configured to interchangeably receive"), not that it actually receives such fixed assembly.

In this case, while it is true that WEGRZYN et al. is silent as to the patented housing being used with a fixed optical assembly, it is also a fact that a fixed optical assembly could be received in the concavity of the patented housing.

The applicant is further advised that the only structure defined by the claim language is a housing with a concavity.

The applicant is further respectfully directed to previous Section 6 where such limitation is addressed.

### ***Conclusion***

39. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ismael Negron whose telephone number is (571) 272-2376. The examiner can normally be reached on Monday-Friday from 9:00 A.M. to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra L. O'Shea, can be reached on (571) 272-2378. The facsimile machine number for the Art Group is (571) 273-8300.

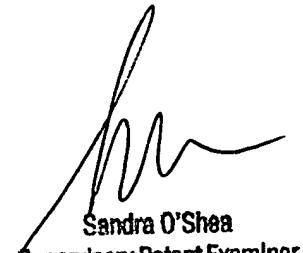
40. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications maybe obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, go to <http://pair-direct.uspto.gov>. Should you

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have questions on access to Private PAIR system, contact the Electronic Business Center (EBC) toll-free at 866-217-9197.



Ismael Negron  
Examiner  
AU 2875



Sandra O'Shea  
Supervisory Patent Examiner  
Technology Center 2800